

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ANN W. EASLEY BRYANT,

Plaintiff,

v.

No. 2:20-cv-01266-RB-SMV

WASHINGTON FEDERAL BANK, INC. and
BRENT J. BEARDALL,

Defendants.

MEMORANDUM OPINION AND ORDER
GRANTING MOTION TO AMEND AND
DENYING MOTION FOR SERVICE

THIS MATTER comes before the Court on *pro se* Plaintiff Ann Easley Bryant's Motion to Effect Personal Service. (Doc. 11.) Ms. Bryant, who has a savings account with Defendant Washington Federal Bank (the Bank), alleges that the Bank's employees altered her withdrawals and kept her money from June 2015 through August 2018. (*See* Doc. 6.) Ms. Bryant asserts tort claims and a claim pursuant to 18 U.S.C. § 1005. The Court has dismissed the claim pursuant to 18 U.S.C. § 1005. (*See* Doc. 8 (stating criminal statutes do not provide for private civil causes of action).)


On June 25, 2021, United States Magistrate Judge Stephan M. Vidmar notified Ms. Bryant that she "has taken no action to pursue her claims since she filed her Amended Complaint on January 7, 2021," and ordered Ms. Bryant to show cause why this action should not be dismissed. (Doc. 10 (citing D.N.M.LR-Civ. 41.1 which allows for dismissal where plaintiff takes no steps to move the case forward for 90 days).)

Ms. Bryant subsequently filed the present motion requesting that the Court: (i) "not dismiss her claim against Washington Federal Bank;" (ii) "permit her to submit a new and corrected Cause

of Action . . . [because] Due to COVID-19 the law libraries were closed and the Plaintiff was unable to properly research her case;” and (iii) “effect personal service upon Washington Federal Bank.” (Doc. 11 at 1.)

The Court grants Ms. Bryant’s request to file a second amended complaint. *See* Fed. R. Civ. P. 15(a)(2) (“The court should freely give leave when justice so requires”). The Court denies Ms. Bryant’s request to serve the Bank, because service requires delivery of the complaint, the Court has granted the request to file a second amended complaint, but she has not yet filed her second amended complaint. *See* Fed. R. Civ. P. 4(h), (e)(2)(A). The Court will order service on Defendants if Ms. Bryant files a second amended complaint that states a claim over which the Court has jurisdiction and files a motion for service which provides Defendants’ addresses.

IT IS ORDERED that the Motion to Effect Personal Service (Doc. 11) is **GRANTED in part** and **DENIED in part**. The Court grants Ms. Bryant’s request to file a second amended complaint. Ms. Bryant shall file her second amended complaint within 21 days of entry of this Order. Failure to timely file a second amended complaint may result in dismissal of this case. The Court denies the request that the Court serve process on Defendants.



ROBERT C. BRACK
SENIOR U.S. DISTRICT JUDGE